IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION

Criminal Application No.1057 of 2006

Lalit Somdatta Nagpal. .. Applicant.
Vs.
The State of Maharashtra. .. Respondent
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S/Shri A.P.Mundargi, Senior Advocate i/b Amin Solkar for the Applicant.

Mrs. M.M. Deshmukh, APP for the Respondent.
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CORAM: ABHAY S. OKA, J

DATED: 14TH JULY, 2006.

P.C.

1. As the first bail application filed by the applicant was rejected by me, by an administrative order dated 20th March, 2006, the Hon'ble the Chief Justice has assigned this application to me.

2. I have extensively heard the submissions made by Shri Mundargi, learned Senior Counsel appearing in support of the application.

3. The offence registered against the applicant is a very serious offence under Sections 465, 467, 468, 471, 474, 480 read with Section 34 of the Indian

Penal Code and Sections 3 and 7 of the Essential Commodities Act. The earlier bail application made by the applicant being Criminal Application No.5344 of 2005 was rejected by this Court. In the earlier order, it is noted that the applicant applied for anticipatory bail to this Court which came to be rejected. The order passed by this Court was challenged by the applicant by filing a Special Leave Petition in the Apex Court. The Apex Court by an order dated 14th December, 2004 rejected the prayer made by the applicant for grant of anticipatory bail. The Apex Court granted 15 days time to the applicant to surrender by directing the police not to arrest the applicant for the said period. The Apex Court observed that after the applicant surrenders, he can apply for a regular bail, which will be decided uninfluenced by the observations made by this Court as well as the Apex Court while deciding the application for anticipatory bail.

4. The earlier bail application was rejected by this Court by noticing that though the Apex Court rejected the Special Leave Petition on 14th December, 2004 by granting two weeks' time to the applicant to surrender, the applicant did not surrender till 1st July, 2005. This Court also considered the

submissions made on the basis of the parity. The said submission was rejected by this Court by observing that the role played by the applicant is different. This Court also observed that while considering the claim for parity, the conduct which is peculiar to the applicant has to be considered. This Court also held that as the applicant has breached the order of the Apex Court with impunity, there is some merit in the apprehension expressed by the Investigating Officer about the conduct of the applicant after he is enlarged on bail. This Court also took note of criminal antecedents of the applicant. The order passed by this Court in Criminal Application No.5344 of 2005 was challenged by the applicant by filing Special Leave Petition. On 20th January, 2006, the Special Leave Petition was dismissed by passing the following order.

> "Delay condoned. Heard. We see no reason to interfere. The special leave petition is dismissed. This will not bar the petitioner to approach the trial court afresh."

Thereafter, the applicant moved a fresh application before the Sessions Court, which has been rejected on 3rd March, 2006.

5. During the pendency of the present application i.e. Criminal Application No.1057 of 2006, Criminal Application No.348 of 2006 has been filed seeking direction that the applicant be transferred to Bombay and Hospitalised in a particular clinic for medical treatment. On the said application, I passed the order calling for the report of the Civil Surgeon, Kolhapur. Accordingly, the report has been submitted today.

6. Learned senior counsel appearing for the applicant submitted that the ground on which the earlier bail application was rejected does not survive now as a result of lapse of time. He submitted that on the ground that the Applicant denied the order of the Apex Court, the bail was defied on 8th September, 2005 by this Court and now with the passage of time, the bail cannot be denied on the same ground. He submitted that the offences which are registered against the applicant are not serious in the sense that they cannot be meted with any serious punishment. Inviting my attention to the material on record, he submitted that the applicant is entitled to bail. He submitted that on the ground of sickness of the applicant, which is reflected in the material placed

in Criminal Application no.348 of 2006, the applicant deserves to be enlarged on bail.

7. The Learned APP submitted that there is no case of change of circumstances. The learned APP pointed out that the medical reports which are submitted in Application No.348 of 2006 are conflicting and on the ground of sickness, the applicant cannot be enlarged on bail. Learned senior counsel appearing for the applicant replied that the report which is submitted today discloses that the applicant is suffering from serious ailment.

8. I have considered the submissions. I have already indicated the ground on which the earlier bail application was rejected by me. The order passed by this Court was carried to the Apex Court. The Apex Court dismissed the Special Leave Petition and observed that dismissal of the Special Leave Petition will not bar the applicant from approaching the trial court afresh. It is pertinent to note that the reasoning given by this Court while rejecting the earlier bail application has not been disturbed by the Apex Court.

9. The question before me is whether there is any

substantial change in circumstances which requires earlier view to be upset. The merits of the case cannot be considered afresh in the second bail application. The ground on which the earlier bail application was rejected is the objectionable conduct of the applicant of defying the order of the Apex Court. The applicant took benefit of the order of the Apex Court by which his arrest was postponed by a period of two weeks and thereafter did not surrender for a period of six months. The apprehension of the investigating agency expressed was that considering such conduct of the applicant, if the Applicant is released on bail the applicant may abscond and may indulge in objectionable activities.

10. In my view, the ground on which the bail was denied in the earlier application still remains and the same cannot disappear with passage of time. The submission based on parity is also dealt with in the earlier application.

11. So far as the ground of sickness is concerned, the prayer made in the other application being Misc.Criminal Application No.348 of 2006 is for shifting the applicant to Bombay in a hospital of his choice. In my view, the material on record is not

sufficient to grant relief of bail on medical grounds.

12. However, on the basis of the material on record, the prayer in Criminal Application No.348 of 2006 will have to be considered on merits. As the ground of illness was pleaded in the bail Application, I passed the order in Criminal Application No.348 of 2006 calling for the medical report from the Civil Surgeon, Kolhapur. As stated earlier, on the basis of the medical report, I find that no case is made out for enlarging the applicant on bail. However, the prayer as regards shifting the applicant to a particular hospital made in Criminal Application No.348 of 2006 will have to be considered on its own merits. Hence, I pass the following order.

(i) Criminal Application No.1057 of 2006 is rejected.

(ii) Criminal Application No.348 of 2006 be placed before the appropriate court taking up such applications.

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